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In re Application of:
BERNARD, Jerome, et al. : DECISION ON PETITION
U.S. Application No.: 10/590,734 : (37 CFR 1.181)
PCT Application No.: PCT/EP2005/002367 :
International Filing Date: 10 February 2005 :
Priority Date: 27 February 2004 :
Attorney's Docket No.: 2121-0191PUS1 :

This decision is issued in response to applicant's "Request For Corrected Notice Of Acceptance" filed 03 October 2008 and resubmitted on 30 September 2010, treated herein as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 10 February 2005, applicants filed international application PCT/EP2005/002367. The international application claimed a priority date of 27 February 2004, and it designated the United States. On 15 September 2005, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was 30 months from the priority date, i.e., 27 August 2006.

An executed declaration of the inventors was filed during the international stage of PCT/EP2005/002367 pursuant to PCT Rules 4.17(iv) and 26ter.

On 25 August 2006, applicants filed papers to initiate a U.S. national stage application. This submission included, among other materials, payment of the basic national fee. The submission did not include an express request to begin national examination procedures pursuant to 35 U.S.C. 371(f).

On 12 October 2006, applicants filed a Combined Declaration And Power Of Attorney.

On 11 July 2008, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Acceptance (Form PCT/DO/EO/903) identifying the "Date Of Receipt Of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) Requirements" as 25 August 2006 and the "Date Of Completion Of All 35 U.S.C. 371 Requirements" as 27 August 2006. On the same date, the USPTO issued a filing receipt identifying the 35 U.S.C. 371(c) date as 25 August 2006.

On 03 October 2008, applicants filed the “Request For Corrected Notice Of Acceptance” considered as a petition herein (the petition was resubmitted on 30 September 2010).

DISCUSSION

The present petition requests a corrected Notification Of Acceptance identifying the “Date Of Completion Of All 35 U.S.C. 371 Requirements” as 12 October 2006, the date applicants filed the executed Combined Declaration And Power Of Attorney. However, as noted above, an executed inventors’ declaration was filed during the international stage of PCT/EP2005/002367 pursuant to PCT Rules 4.17(iv) and 26ter. As set forth in 37 CFR 1.497(a), where a compliant declaration has been timely submitted in the international application under PCT Rule 4.17(iv), a new declaration under 37 CFR 1.497 is not required. Thus, the declaration filed by applicants in the national stage application on 12 October 2006 was not necessary to satisfy the declaration requirement of 35 U.S.C. 371(c)(4); such requirement had already been satisfied during the international stage.

MPEP section 1893.03(b), sets forth the following criteria for determining the correct “Date Of Completion Of all 35 U.S.C. 371 Requirements” listed on the Notification Of Acceptance:

The "Date of Completion of all 35 U.S.C. 371 Requirements" included on the NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.495 (Form PCT/DO/EO/903) is ... the latest of:

- (A) the date of submission of the basic national fee;
- (B) the date of submission or communication of the copy of the international application;
- (C) the date of submission of the translation of the international application if the international application is not in the English language;
- (D) the date of submission of an oath or declaration of the inventor in compliance with 35 U.S.C. 371 (c)(4) (see 37 CFR 1.497(c) for an explanation of when an oath or declaration will be accepted as complying with 35 U.S.C. 371(c)(4));
- (E) the earlier of 30 months from the priority date or the date of request for early processing under 35 U.S.C. 371(f) if requested prior to 30 months from the priority date (Form PCT/DO/EO/903 will indicate the date early processing was requested);
- (F) if a request for early processing has not been requested prior to 30 months from the priority date, the date of submission of any translation of the annexes to the international preliminary examination report if the translation of the annexes are filed within the time period set in a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring either an English translation of the international application or an oath or declaration; and

(G) the date of submission of any surcharge for submitting the oath or declaration later than 30 months from the priority date.

In the present application, elements A, B, and D were satisfied as of 25 August 2006 (based on applicants' original national stage submission and the declaration filed during the international stage), and elements C, F, and G do not apply. The appropriate "Date Of Completion Of All 35 U.S.C. 371 Requirements" is therefore determined by element E. As noted above, the materials filed by applicants on 25 August 2006 to initiate the present application did not include a "request for early processing under 35 U.S.C. 371(f)." Accordingly, pursuant to element E, the appropriate "Date Of Completion Of All 35 U.S.C. 371 Requirements" is 27 August 2006, that is, "the earlier of 30 months from the priority date or the date of request for early processing under 35 U.S.C. 371(c)(4)."

Based on the above, the Notification Of Acceptance (Form PCT/DO/EO/903) mailed 11 July 2008 properly identified the "Date Of Receipt Of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) Requirements" as 25 August 2006 and the "Date Of Completion Of All 35 U.S.C. 371 Requirements" as 27 August 2006. Applicants' request for a corrected Notification Of Acceptance identifying the "Date Of Completion Of All 35 U.S.C. 371 Requirements" as 12 October 2006 is therefore properly dismissed.

CONCLUSION

The Request For Corrected Notice Of Acceptance is **DISMISSED** without prejudice.

The correct "Date Of Receipt Of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) Requirements" is 25 August 2006 and the correct "Date Of Completion Of All 35 U.S.C. 371 Requirements" is 27 August 2006, as indicated in the Notification Of Acceptance (Form PCT/DO/EO/903) mailed 11 July 2008.

/RichardMRoss/

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